**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of   Docket No: Q76440

Lieven TRAPPENIERS, et al.

Appln. No.: 10/616,980   Group Art Unit: 2155

Confirmation No.: 2865   Examiner: Shawki Saif ISMAIL

Filed: July 11, 2003

For: METHOD, COMPUTER SOFTWARE PRODUCTS, CLIENT TERMINAL, NETWORK ELEMENT AND NETWORK FOR EFFICIENT USE OF NETWORK RESOURCES BY JUST-IN-TIME MODULATION OF QUALITY OF SERVICE BASED ON SERVICE USAGE AND USER BEHAVIOR

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

        In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits

this Reply Brief in response to the Examiner's Answer dated June 2, 2008. Entry of this Reply

Brief is respectfully requested.

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STATUS OF CLAIMS

Claims 1-12 are all of the pending claims in the present application, and are the subject of this appeal.

Claims 1-12 stand rejected under 35 U.S.C. § 102(b) as allegedly being unpatentable over Spell et al. (U.S. Patent No. 6,208,640).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

There is only one issue for appeal. The single issue is whether claims 1-12 are improperly rejected under 35 U.S.C. § 102(b) as allegedly being unpatentable over U.S. Patent No. 6,208,640 to Spell et al.

For the purposes of this appeal, independent claims 1, 4, 5, and 6, and the claims dependent thereon, stand together.

ARGUMENT

Claims 1-12 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,208,640 to Spell et al. ("Spell"). Appellant responds to the Examiner's Answer of June 2, 2008 as follows.

Claim 1 requires "receiving a user profile from a client terminal, said user profile comprising aggregated user behavior information recorded at said client terminal." In the "Response to Argument" section of the Examiner's Answer, the Examiner points to col. 4, lines 7-13 of Spell. (Examiner's Answer at 5.) This portion of Spell states that "in addition to (or in place of) using classifications of data streams as to type of data, other information useful in predicting future bandwidth requirements for a data stream are employed (such as knowledge, for a given user, that a particular type of data stream occurring during a certain time period is likely to be relatively long or relatively short)." (emphasis added.)

The Examiner appears to contend that the information about the data stream described in the above-quoted portion of Spell teaches "aggregated user behavior information recorded at said client terminal." It is clear, however, based on a plain reading of the above-quoted portion of Spell, as well as the remainder of that reference, that Spell is simply insufficient to teach the above-quoted requirement of claim 1.

Firstly, all discussion in Spell regarding information used in order to implement a self-learning or predictive system only pertains to information on data streams. The above-quoted portion of Spell, for example, only contrasts two types of information about data streams: (1) the type of data in a data stream, and (2) the length of a data stream at a particular time. (Spell at col. 4, lines 7-13.) The fact that such information is described as being "for a given user" does not make it "aggregated user behavior information" as required by claim 1. In fact, the only independent claim of the Spell reference describes "identifying a first characteristic of said stream," and claims nothing whatsoever with respect to a user. Thus, it is clear that the system

of Spell relies on an analysis of <u>data streams</u> and their characteristics, rather than any "aggregated user behavior information," which is clearly a different and distinct feature.

Secondly, Spell completely fails to teach that any aggregate information upon which the system of Spell relies is "recorded at [a] client terminal." Furthermore, since the system of Spell is based on the analysis of characteristics of data streams, which clearly need not be recorded at a "client terminal," such a feature cannot possibly be construed as inherent to the system of Spell. Although this is a clear requirement of claim 1, the Examiner still provides no support for the assertion that any aggregate information in Spell is "recorded at [a] client terminal."
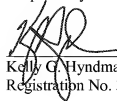
Thus, Spell fails to teach the use of "aggregated user behavior information" and fails to teach that such information is "recorded at [a] client terminal." Since Spell fails to teach each and every element of claim 1, Spell fails to anticipate claim 1. Accordingly, Appellant respectfully requests that the rejection of claim 1 and its dependent claims 2-5 and 10-12 be withdrawn.

Independent claims 6, 7, and 9 recite features similar to those of claim 1. Appellant submits, that these claims are, therefore, also patentable at least for reasons analogous to those presented above with regard to claim 1. Accordingly, Appellant respectfully requests that the rejection of independent claims 6, 7, and 9, and dependent claim 8 be withdrawn.

CONCLUSION

For the above reasons as well as the reasons set forth in Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal.

An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,

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